

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	No. CR-F-02-5379 OWW
	)	
	)	MEMORANDUM DECISION AND
	)	ORDER DENYING PETITIONER
Plaintiff/	)	MANUEL QUINTERO'S MOTION FOR
Respondent,	)	REDUCTION OF SENTENCE (CRACK
	)	COCAINE) PURSUANT TO 18
vs.	)	U.S.C. § 3582(c)(2)
	)	
	)	
MANUEL QUINTERO,	)	
	)	
	)	
Defendant/	)	
Petitioner.	)	
	)	
	)	

Petitioner Manuel Quintero, proceeding *in pro per*, has filed a motion for a two-level reduction in the calculation of his base offense level pursuant to 18 U.S.C. § 3582(c)(2). Because of Petitioner's reference to crack cocaine, Petitioner's motion is based on Amendment 706 to the United States Sentencing Guidelines, made retroactive by Amendment 713. Petitioner asserts that he is due to be released from custody on June 17, 2011 and is seeking immediate release from custody.

Petitioner pleaded guilty pursuant to a written Plea

1 Agreement to conspiracy to distribute and possess with intent to  
2 distribute cocaine base/crack in violation of 21 U.S.C. §§  
3 841(a) (1) and 846, a conviction that carries a mandatory  
4 statutory minimum sentence of ten years/120 months. The  
5 Presentence Investigation Report calculated Petitioner's  
6 applicable offense level as 36 and his criminal history category  
7 as I, resulting in a guideline range of 188-215 months. At  
8 sentencing, the Court calculated the base offense level for crack  
9 cocaine as 38, reduced the base offense level by 2 levels for  
10 acceptance of responsibility, and then departed downward by seven  
11 levels for sentencing entrapment "to a level 31, where the  
12 mandatory minimum would be the 120 months." (Doc. 69, 19:22-  
13 20:3). Petitioner was sentenced on October 20, 2003 to 120  
14 months in custody.

15 Section 3582(c) (2) provides:

16 The court may not modify a term of  
17 imprisonment once it has been imposed except  
18 that -

19 ...

20 (2) in the case of a defendant who has been  
21 sentenced to a term of imprisonment based on  
22 a sentencing range that has been subsequently  
23 lowered by the Sentencing Commission pursuant  
24 to 28 U.S.C. 994(o), upon motion of the  
25 defendant ..., the court may reduce the term  
26 of imprisonment, after considering the  
factors set forth in section 3553(a) to the  
extent that they are applicable, if such a  
reduction is consistent with applicable  
policy statements issued by the Sentencing  
Commission.

The Sentencing Commission promulgated Amendment 706 to the

1 Sentencing Guidelines to reduce the disparity in sentencing  
2 between offenses involving powder cocaine and crack cocaine. See  
3 *Kimbrough v. United States*, 552 U.S. 85 (2007). Amendment 706,  
4 which became effective on November 1, 2007, reduces this  
5 disparity by adjusting downward by two points the base offense  
6 levels assigned to various categories of crack cocaine in the  
7 Drug Quantity Table in U.S.S.G. § 2D1.1. According to the  
8 relevant U.S.S.G. policy statement, "a reduction ... is not  
9 authorized under 18 U.S.C. § 3582(c)(2) [if the] amendment is  
10 applicable to the defendant but the amendment does not have the  
11 effect of lowering the defendant's applicable guideline range  
12 because of the operation of a statutory mandatory minimum term of  
13 imprisonment[]." U.S.S.G. § 1B1.10, cmt. n.1(A). If the two-  
14 level reduction in Petitioner's base level is applied pursuant to  
15 Amendment 706, the resulting base level is 34. Given the  
16 criminal history category of I, the sentencing guideline range  
17 would be 151-188 months. A further 7 level reduction because of  
18 sentencing entrapment results in a base offense level of 27,  
19 resulting in a guideline range of 70-87 months. U.S.S.G. §  
20 1B1.10 provides:

21 (a) Authority. --

22 (1) In General. - In a case in which a  
23 defendant is serving a term of imprisonment,  
24 and the guideline range applicable to that  
25 defendant has subsequently been lowered as a  
26 result of an amendment to the Guidelines  
Manual listed in subsection (c) below, the  
court may reduce the defendant's term of  
imprisonment as provided by 18 U.S.C.  
3582(c)(2). As required by 18 U.S.C.

1 3582(c)(2), any such reduction in the  
2 defendant's term of imprisonment shall be  
consistent with this policy statement.

3 (2) Exclusions. - A reduction in the  
4 defendant's term of imprisonment is not  
5 consistent with this policy statement and  
therefore is not authorized under 18 U.S.C.  
3582(c)(2) if -

6 ...

7 (B) An amendment listed in  
8 subsection (c) does not have the effect of  
lowering the defendant's applicable guideline  
range.

9 ...

10 (b) Determination of Reduction in Term of  
11 Imprisonment. --

12 (1) In General. - In determining whether, and  
13 to what extent, a reduction in the  
14 defendant's term of imprisonment under 18  
15 U.S.C. 3582(c)(2) and this policy statement  
16 is warranted, the court shall determine the  
17 amended guideline range that would have been  
18 applicable to the defendant if the  
19 amendment(s) to the guidelines listed in  
20 subsection (c) had been in effect at the time  
the defendant was sentenced. In making such  
determination, the court shall substitute  
only the amendments listed in subsection (c)  
for the corresponding guideline provisions  
that were applied when the defendant was  
sentenced and shall leave all other guideline  
application decisions unaffected.

21 (2) Limitations and Prohibition on Extent of  
Reduction. --

22 (A) In General. - Except as  
23 provided in subdivision (B), the court shall  
24 not reduce the defendant's term of  
25 imprisonment under 18 U.S.C. § 3582(c)(2) and  
26 this policy statement to a term that is less  
than the minimum of the amended guideline  
range determined under subdivision (1) of  
this subsection.

1 (B) Exception. - If the original  
2 term of imprisonment imposed was less than  
3 the term of imprisonment provided by the  
4 guideline range applicable to the defendant  
5 at the time of sentencing, a reduction  
6 comparably less than the amended guideline  
7 range determined under subdivision (1) of  
8 this subsection may be appropriate. However,  
9 if the original term of imprisonment  
10 constituted a non-guideline sentence  
11 determined pursuant to 18 U.S.C. 3553(a) and  
12 *United States v. Booker*, 543 U.S. 220 (2005),  
13 a further reduction generally would not be  
14 appropriate.

15 (C) Prohibition. - In no event may  
16 the reduced term of imprisonment be less than  
17 the term of imprisonment the defendant has  
18 already served.

19 Here, the crime of conviction is subject to a mandatory statutory  
20 minimum, below which Petitioner cannot be sentenced, absent  
21 application of the safety valve. See 18 U.S.C. § 3553(f).

22 Although Petitioner argued for application of the safety valve at  
23 sentencing, the Court denied the request, instead reducing the  
24 base offense level to a 31 because of sentencing entrapment in  
25 order to impose the statutory mandatory minimum sentence of 120  
26 months. Consequently, although Amendment 706 is applicable to  
27 Petitioner, according to the relevant U.S.S.G. policy statement,  
28 the amendment does not have the effect of lowering Petitioner's  
29 applicable guideline range because of the operation of the  
30 statutory mandatory minimum term of 120 months.

31 Petitioner Manuel Quintero's motion for a two-level  
32 reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) and for

1 immediate release from custody is DENIED.<sup>1</sup>

2 IT IS SO ORDERED.

3 Dated: September 2, 2010

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24 \_\_\_\_\_  
25 <sup>1</sup>Petitioner's motion requests appointment of counsel to  
26 represent him in connection with his motion. Because Petitioner is  
not entitled to the relief requested as a matter of law, counsel is  
not appointed.